No. 318.

Supp. Brf. of Bigelow for Petitioner

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ROBERT E. DOWNS,

Petitioner,

vs.

THE UNITED STATES.

SUPPLEMENTARY BRIEF ON BEHALF OF PETITIONER.

ERNEST A. BIGELOW,
Counsel for Petitioner.

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Answering a question asked on the argument:

The purchase price of the "free sugar export certificate," like the purchase price of the "Transfer," is measured by the difference between the amount the exporter will obtain for his sugar in the foreign market, and the *net* amount (*i. e.*, *exclusive*, not inclusive, of excise tax), he would have obtained at home. Thus, if the gross market price of sugar at home is 6 cents per pound, the normal excise 2½ cents, and the foreign price, 2 cents, then the price of the Certificate or of the Transfer will be 1½ cents, equal to the difference between 3½ cents, the *net* home price, and 2 cents, the foreign price.

The argument on this point was founded on the state of the American Consul (Rec., p. 62; Princ. Brief, p. 13), wherein he gives an example showing that if the gross market price of sugar at home be Rs. 4.25, and the net price be Rs. 2.50 (*i. e.*, R. 4.25 less the normal excise of R. 1.75), and the foreign price be R. 1.25, then the price of the Right of Issue (whether it be represented by Transfer or Export Certificate) would be R. 1.25 (*i. e.*, R. 2.50 less R. 1.25).

It is plain that the Moscow manufacturer could not afford to pay for this Right of Issue the difference between the foreign price and the *gross* home price (*i. e.*, the cost to the consumer), *for then the transaction would cost him more than if he had sold his own surplus sugar at home* and paid the additional tax, which is precisely what he is trying to avoid. It must be remembered that the Moscow manufacturer acquires by the purchase no right to a remission of any tax; the Transfer, or the Certificate, simply enables him to issue that amount of sugar *upon payment of the normal tax* (Stipulation 8, Rec., p. 10, Princ. Brief, p. 46). If, therefore, he should pay for the Transfer or Certificate the difference between the foreign price of sugar and the *gross* price (*i. e.*, including the tax) at home, he would obviously pay the normal tax *twice*, once to the Government and once to the exporter, and in addition the equivalent of the profits foregone by the exporter. Plainly, then, the Moscow manufacturer, having to pay the normal tax to the Government, will only pay to the exporter a sum which will be not as large as the additional tax, *i. e.*, the price for the Right of Issue must be less than R. 1.75, and that is precisely what the example given by the American Consul shows.

This is very clearly stated by his Honor, Judge Morris, in his opinion in this case (Rec., p. 74): "Manufacturers "will pay *nearly as much as the additional excise tax* for

"the privilege of transferring their surplus sugar to the "free sugar which they are allowed to sell at home."

To put the matter in another way: The manufacturer pays only for what he gets, viz., a right to issue sugar upon payment of the tax; and the price is regulated accordingly. The tax is levied on the Right of Issue, and not on the sugar; when the Right is transferred, the liability to tax goes with it.

SOME MISSTATEMENTS OF FACT IN THE GOVERNMENT BRIEF.

1. Page 4: "A foreign view of the Russian arrange- "ment, holding it to constitute *a bounty on exportation*, "is given by the delegate of Austria-Hungary," &c.

On the contrary, the Austrian delegate proved that the Russian system ensured to the manufacturer a price for his sugar on the home market higher by R. 1.50 per pood than "the price quoted on the markets of the world, "* * * tantamount to a premium of 17.60 francs per "kilo of sugar *produced*." "This measure carries *exactly* "*the same effect* as the export bounty given by the other "States" (Rep. of Conf., p. 60).

A bounty *on production*, deleterious to the foreign market when the bounty fed sugar is exported; and not, as stated in the Government brief, a "bounty on exporta- "tion."

2. Page 5: "Sugar from neither of these reserves "('indivertible' and 'surplus' reserve) may be put on "the home market *except* on payment of the double ex- "cise tax, which is practically prohibitive."

Sugar from the "indivertible reserve" cannot be put on the home market upon payment of the additional tax; it

can be placed on the home market *only by order of the Ministry*, to break the price of sugar, *and then at the normal tax* (Reg. Secs., 32, 33, Rec. p. 54; Law. Sec. 7, Rec., p. 41).

3. Page 6: "Was there not some purpose in the antag- "onistic purposes of stimulating production and control- "ling it, to achieve the first purpose, not by frank en- "couragement of exportation free from tax, but by the "veiled method of a reserve production, *ostensibly* held "against domestic needs and price disturbances but *really* "*a supply for exportation*, which is benefited by a pre- "mium?"

We may answer counsel for the Government by observing that the "reserve" production is not only "ostensibly" but *actually* held against "domestic needs and price "disturbances," for as shown above, the "indivertible reserve," which is the only one set apart against price disturbances (Law Sec. 1, *b*, *c*.; Rec. p. 41), cannot be withdrawn from the mill *except for that purpose*, and therefore cannot be "really a supply for exportation."

4. A much more serious misstatement, however, is that on page 19, and again on page 26, that Russia *admitted* the compulsory character of its sugar exportation in Clause 6, in the annex to the *proces verbal* (Rep. of Conf., p. 80).

The annex was, as was later admitted by the Assistant Attorney General on the argument, simply the proposition of "several delegates * * * with a view of "diminishing the tension existing between the divergent "opinions." Who those "several delegates" were we are not informed, but we may be very sure that the Russian delegate was not among them, in view of his consistent refusal to be a party to any discussion of the internal régime of his country (Reg., pp. 61, 78, &c.).

SOME FALLACIES IN THE GOVERNMENT BRIEF.

1. On page 26 it is stated that the manufacturer "would not transfer to the next campaign's account (a "fallacy reiterated by counsel), because clearly this "would cut down that campaign's production just so "much. (This is evident from careful analysis of Regu- "lation 19, Rec., p. 50)."

As the Government founds on this misstatement its claim that the Russian law forces exportation, counsel may be permitted to cite in full the note to Regulation 19 (Rec., p. 51): "The surplus carried over from the previous "campaign *without* being transferred to the coming pro- "duction is not included in the production account in "making the accounts for the several mills, as set forth "in Sections 5 to 7" (Rec., p. 43 *et seq.*).

Sections 5 and 7, referred to, provide that in the various computations of the total product of the mill shall always be included the "surplus sugar carried over "from the preceding campaign and canceled off the sur- "plus account." Upon the aggregate production, so estimated, "the ministry of finance determines what "percentage ratio the surplus shall bear to the output," &c. (Reg., Secs. 11, 12; Rec., p. 48).

As to the extent to which Regulation 19 is availed of reference may be made to page 71 of the report of the Conference, where the Russian delegate states that 3,600,000 poods were thus carried over in 1900, as against about 5,000,000 poods exported. The Regulation cannot be deemed an "illusory" device when in that year nearly 75 per cent. as much sugar was transferred to the new campaign as was exported.

It is evident that "careful analysis of Regulation 19"

produces a result exactly contrary to that claimed by the Government.

2. Again, on page 26, "But the man who transfers free "sugar has only reserve sugar in exchange; and I submit "that it is conclusively shown he *must* export and *does* "export—manifestly *always* exports."

Even if this were accurate, which it is not, total export from Russia would not thereby be increased. What the transferor exports, the transferee *withdraws from export* (if export was his original intention) *and that is the very purpose of the transaction.*

Since total exportation is not increased it cannot be said that the "Russian scheme" is to induce export by this "device."

3. Again, on this same page 26: "It may be that there "was some confusion in the tribunals below as to the "Government certificate or voucher showing export "merely and serving as the foundation of the remission "of tax, and the certificate of transfer between mills from "reserve to free sugar. Both carry a benefit—the first "freedom from tax liability, the second a domestic mar-"ket right salable on 'change. *Together they equal in value "the highly protected, doubly and trebly protected, Gov-"ernment sugar price, as counsel shows* (Brief, p. "22)." (!!!)

The "Government certificate or voucher showing ex-"portation merely and serving as the foundation of the "remission of the tax," and carrying the benefit of "free-"dom from tax liability," can only be the "surplus export "certificate," for as shown in the principal brief, it is only "surplus" certificates which vouch the remission of any tax, "free" certificates having a very different function (Princ. Brief, pp. 17, 19).

Therefore, the proposition of the learned Assistant Attorney-General is this: The surplus export certificate, plus the certificate of transfer between mills, "*together* "they equal in value the highly protected, doubly and "trebly protected Government sugar price as counsel "shows." A proposition manifestly absurd.

(1) The price of the "Transfer" *plus the price received for the sugar on the foreign market*, or (2), the price of the "free sugar certificate" *plus the price received for the sugar abroad*—either equals the "highly protected, etc., "Government sugar price," less, of course, the excise tax (Brief, pp. 13, 21, 22). The "surplus" export certificate, however, is utterly valueless and plays no part in this computation.

Referring to counsel's endeavor to lay clearly before this Court the distinctions between these various documents and vouchers, the learned Assistant Attorney-General says (p. 27), that "no confusion can be imported into "the question on this score." "Importation" is hardly necessary, in view of the foregoing.

4. As to the fallacy of the argument on page 28, this Court will need no enlightenment. In adopting the phrase used by the Circuit Court of Appeals, counsel was, of course, endeavoring to bring out more forcibly the point that the benefit to the manufacturer was not conditioned on exportation. Whether this benefit be in the shape of the purchase price of his marketable certificate or in the shape of the purchase price of his marketable free sugar, it is none the less in the "field of market price however fixed."

5. As to the circular of the Treasury Department, referred to on page 24, it is significant only as showing the extraordinarily rapid growth of an erroneous theory, for in a letter to the Collector of the Port of New York (T. D.

19, 321). Assistant Secretary of the Treasury Howells states that "the non collection of an internal revenue tax by the "exporting country does *not* constitute an export bounty "within the contemplation of Section five."

6. No importance can be given to the use of the word "facilitate" in the caption of Regulations 39 and 40 (Rec., p. 57). The Board of Classification lays stress on this word as showing a purpose to induce exportation (Rec., p. 30). The Treasury Department, apparently, considered it as conclusively proving that Russia intended a bounty on export. Thus, in the statement issuing from the Department (Cong. Rec., Feb. 26, 1901, pp. 3335; annexed to the brief of counsel for the Treasury Department before the Board, and credited by him to the Secretary of the Treasury) appears this remarkable process of reasoning:

"6. While it could not be directly inferred from the "wording of the statute itself that the Government, in "arranging its system of sugar taxation, contemplated "an encouragement to export, this object is clearly "expressed in the instructions issued in pursuance of the "statute by the Minister of Finance, wherein this "arrangement is expressly declared to be made 'in order "to facilitate the exportation of the surpluses to foreign "countries.' (Title D., Art. II., Secs. 39 and 40.) That "it results in a bonus from some source to those who "export sugar there can be no doubt."

In reply to this we may call attention to the Act of June 9, 1874 (18 St. at L., 64), entitled "An Act to "*facilitate* the exportation of distilled spirits and amend-"atory of the acts in relation thereto."

The word is properly used in both captions and is admirably chosen. When the Russian manufacturer and the

American distiller have decided to export, the respective laws facilitate the execution of their intention, just as the buoys in a harbor facilitate export, and the use of ether facilitates an operation in surgery.

The Board of Classification and the Treasury Department appear to have overlooked the distinction between facilitating and inducing.

7. The extraordinary *non sequitur* on page 7 of the Government brief is worthy of special attention.

Section nine of the Law (Rec., p. 41) provides that "upon the exportation from the factories of the excess of "sugar, the same is exempted from the excise and additional tax in full measure"; and the Note (Rec., p. 42) authorizes the Ministry to *suspend this remission of excise* "in case of such a rise of the prices of sugar in the "foreign European markets as might become an encouragement of a considerable over production by sugar "factories in the Empire."

Referring to this Note, the Government brief says "the "deliberate export use of the device is emphasized by this "very check upon it."

You check; ergo you recognize; ergo you encourage. *Q. E. D.!*

8. The learned Assistant Attorney-General (Brief, pp. 20, 21) finds in the "resistant and even secretive attitude "of Russia," evidence that the Russian delegates were seeking to avoid the effect of the Russian system; that "throughout the Brussels conference the Russian dele"gates, either by brevity and silence, or else by counter"assertion, manifestly protested too much."

What the Russian (and also the French) delegate did may best be expressed in the words of the Government brief (p. 11): "He shows concern at a discussion of cus-

"toms duties and differentials which might interfere "with sovereign rights 'under the pretense that (the "particular) tariff is too high and favors exportation'" (see also Rep. of Conf., pp. 20, 45, 61, 68, 69, 78).

Is it impertinent to ask what would have been the attitude of a United States delegate under such circumstances?

AS TO THE BRUSSELS SUGAR CONFERENCE OF 1898.

Such was the scope of the conference, covering, as it did, the whole field of government benefits, direct and indirect, on production or on exportation, principal or collateral, by protective tariffs, drawbacks, etc., etc., that the results reached by the delegates are of no more effect here than are the newspaper comments, cited in full in the Government brief.

The Brussels conference and the framers of Section 5 did not have the same objects in view, as is apparent from an examination of the quotations in the Government brief.

Thus, on page 14, quoting the Austrian delegate:

"This situation gives to the manufacturer a certainty "that he may demand of the consumer a price obtained in "fact, a price, shall we say, which not only exceeds that "on the market of the world by the whole of the simple "tax, but which reaches in addition almost the second "payment of the tax. * * * Thus, an actual advan-"tage * * * is gained in consequence: * * * This "measure carries exactly the same effect as the export "bounty given by the other States."

This was the complaint againt Russia, that the artificial

limitation of the market insured a profitable price for the product to the manufacturer, so that he was enabled to accept a less price on his exported surplus.

The Government brief omits an important part of the above statement, which we take the liberty of inserting. On page 15 of the Government brief the first asterisks represent the following significant summary by the Austrian delegate (Rep. Conf., p. 69):

"To sum up, there are annually sold in Russia at least "33,000,000 poods at 2.14 cents per pound more than the "price quoted on the markets of the world. This repre- "sents for the aggregate of Russian factories a favor "which amounts to 49.5 million rubles; that is to say, "$25,500,000. Taking an output of 46.1 million poods of "the current year for a basis, the advantages indicated "are tantamount to a premium of 17.60 francs per 100 "kilos of sugar produced."

We may compare this with President Havemeyer's statement in his annual report to the stockholders of the American Sugar Refining Company for the current year:

"It would seem that with an overflowing Federal "treasury there had disappeared any reason for con- "tinuing the existing high tariff upon raw sugar. It "constitutes a charge upon the consumption of nearly 2 "cents a pound.

"This represents on an annual consumption of 2,360,000 "tons, $85,000,000 a year. Of this, however, only "1,330,000 tons are imported, yielding custom revenues of "$49,000,000. The balance of $36,000,000 goes into pock- "ets of planters of the following States, as follows:

	" TONS.	VALUE.
" Louisiana planters	350,000	$12,600,000
" Domestic Beet planters	150,000	5,400,000
" Hawaii planters	350,000	12,600,000
" Puerto Rico planters	150,000	5,400,000 "

It is submitted that Mr. Havemeyer is of equal authority with the Austrian delegate in discussing the indirect benefits conferred by a protective tariff.

Again, on page 16 of the Government brief appears this quotation from the "very lucid statement" of the Netherlands delegate:

"The Russian system puts a limit by virtue of governmental action to the production for home consumption; that is to say, to the supply for the home market. "Now, if one wishes to limit the supply, it is natural "that the barrier should be raised to stop the influx of "foreign sugars. The surtax is therefore a necessary "adjunct to the limitation of home consumption; but "from that limitation arise the dangers for producers "from other countries. The supply for the home market "being limited, the selling price on that market is very "remunerative. * * * Is that an export bounty? "Not within the technical meaning of the word; but it is "an inducement, a special financial interest, which "operates like a bounty."

Here again we find the gist of the complaint against Russia: that, by artificially limiting the supply on the home market, prices are enhanced, enabling export to be made at little or no profit, or even at a loss.

The portion of the definition of bounty which was intended to apply to the Russian system is stated by the President of the Conference to be that relating to surtaxes, *i. e.*, protective duties. On page 76 of the Report of the Conference occurs this passage:

"The president of the conference believes that the "passage of the definition of bounty which relates to "surtaxes can be applied to the system established by

"Russian legislation. The passage indeed, reads: 'Ad-
"vantages similar to those resulting from bounties can
"be derived from the disproportion between the rates of
"customs duties and that of consumption duties (sur-
"taxes), especially in places where public authorities en-
"force, suggest, or encourage combinations among sugar
"producers.' It is obvious that Russian legislation in-
"cites such combinations by limiting the supply for home
"consumption. It may be asserted that the surtax, con-
"sidered by itself, exercises but secondary influence. It
"is a combination of surtax and limitation of supply that
"affords the cause for the enhancement of prices. Now,
"this enhancement reaches a high figure. The sugar,
"after deducting the amount of the duty, *costs twice as*
"*much in Russia as on the London markets.*"

It is conclusively shown by these extracts that the Brussels Conference of 1898 regarded the Russian system as effecting the indirect payment of a bounty by means of the artificially enhanced prices on the home market, and that these high prices enabled the manufacturer to accept a lower price for his exported surplus.

AS TO THE BRUSSELS CONFERENCE OF 1902.

The Treaty adopted by the various powers provided that a surtax in excess of $1.15 per 220 pounds is a bounty, and will be countervailed (Princ. Brief, pp. 34, 42). We may at any time expect this penalty to be imposed on our own exports of sugar, which in 1900 amounted to about 8,000 tons, and may be expected to increase. According to the Treaty, we pay a bounty of nearly $29 per ton, a total for the sugar exported of $232,000.

Plainly, then, Congress did not contemplate the same "bounties" as those discussed by the Brussels Conferences, and this brings us back to the original question as to the meaning of the phrase, "to pay or bestow a bounty or grant on exportation," as used in Section 5.

THE REAL QUESTION.

We may be pardoned for reiterating that Congress could not have intended to penalize in one section of an act the very system established in the rest of the act.

The Government brief recognizes the analogy between the Russian system and the American system, and seeks to evade the consequences of this analogy by saying (p. 30) that "we are not called upon to falter before academic consistency," and that, "we are honestly able to urge "that when Russia imposes excessive import duties and "surtaxes on sugar, creating an exclusive domestic "market and sustaining a high price therein, and really "fostering production while professing to limit it, puts a "premium on exportation *so as to injure our own scheme* "*of protection*, we may scrutinize, detect, and weight the "operation at this end, and thus maintain our self-pro-

"tection." And furthermore (p. 29), that this government would have "no very conclusive ground of objec-"tion" if other countries should do the same by us.

It is submitted that this begs the question. The question is not what we *can* do, but what we *have* done.

We do not deny that Congress, in the exercise of our sovereign rights as a Nation, might exclude all foreign products from our markets and give no better reason than that we did not want them in the country; but the question here is whether Congress has sufficiently indicated *in Section 5* any such intention. In other words, the question is what was contemplated by Congress when it used the words: "Pay or bestow a bounty or grant on exportation."

What, now, is the test proposed by the learned Assistant Attorney General for the application of the section? I quote from his brief (p. 30):

"We do not penalize as 'bounties' the enhanced "domestic prices due to artificial limitations of the "home market by a protective tariff and its legitimate "incidents, but when an extreme extension of the pro-"tective idea brings deleterious results to our home "interests all the way from Russia, we do properly pen-"alize the concrete expression of these results as an "indirect bounty. And if some possible extension of "our protection and export provisions so operated "abroad, I imagine we should have no more satisfactory "answer to offer than Russia has in this case."

That, then, is the test proposed by the government. The protective tariff is not a "bounty" within the scope of the section until it becomes deleterious to our markets! It is the *extent* of the artificial limitation of the mar-

ket by protective tariff that determines whether it is a "bounty" within the scope of the section!

The answer to this extraordinary proposition is that that is not the way to construe a statute; that if you do not penalize as "bounties" the enhanced prices due to artificial limitations of the home market *until* they become deleterious to our own market, then you cannot penalize them at all, under Section 5; for a "bounty" is to be judged according to its nature, not to its size. A "bounty" is a "bounty," whether it is large or small, deleterious or harmless, and the word as used in the section must be so interpreted. It cannot be given an elastic scope, applying or not applying, according to the size of the artificial aid; that is not the way customs acts are construed.

CONCLUSION.

Regardless, therefore, of the Brussels Conference, regardless of the various newspaper items quoted in the Government brief, regardless of the views of governments hostile to Russia, that the Russian system "has the same effect" or "operates precisely like," &c., &c., the direct export bounties granted by other States, the question here is: Did Congress, when it used the words "pay or bestow a bounty or grant upon exportation," *intend* to include therein the artificial advantages insured to manufacturers by the operation of a protective tariff? It is not denied that the enhanced prices due to a protective tariff are indirect bounties, but the question is whether Congress intended to include them within the scope of the words "bounty or grant" used in the statute; and it is submitted that Congress could have had no such intention.

It is inconceivable that Congress should have had the audacity to condemn as bounty paying on the part of other nations the very system which has been the economic policy of this nation for nearly a hundred years; to establish in the Dingley Act a complete and extensive system of protective duties and entitle the act "An Act to Encourage the Industries of the United States," and in one of the sections of that act to declare that, if other nations shall adopt the very same system, it shall be deemed bounty paying on their part, and penalized accordingly. Such hypocrisy should not be attributed to Congress.

By limiting the words "bounty or grant on exportation" to payments out of the public treasury, in cash or its equivalent, conditioned on exportation, and tending to lower the natural cost of foreign production, the section

is given its full force and effect—a purpose clear, definite, and in harmony with the rest of the act. By extending the section to cover all possible benefits conferred by the operation of wise and beneficent laws, it is given a scope co-extensive with the powers of government itself.

Consider the effect of such an interpretation as the latter: The Secretary of the Treasury is to estimate, and countervail by additional duties, the value to the exporter of the high prices which he can obtain on his protected home market for the balance of his product and this not alone on sugar, but on all articles which in their home market are protected by a tariff or subjected to excise taxes which are remitted on exportation. Such would be the inevitable result of giving to Section 5 any such extreme application as is hinted at on pages 25, 30, of the Government brief.

Congress could not have intended to impose on the Secretary of the Treasury this task, impossible of fulfillment.

The Russian delegate's question may be not out of place here:

"May I be permitted to ask whether the intention in "directing the discussion to the tariff system of certain "countries is a platonic and academic one? Has the "possibility been contemplated of applying, to countries "which in the free use of their sovereign rights have "fixed their customs tariffs in accordance with their "national interests, a differential duty under the pretense "that their tariff is too high and favors exportation? "Would it be indiscreet to ask how this differential duty "is to be computed? On what basis shall it be estab-"lished?" (Rep. Conf., p. 50).

We do not insist upon this analogy between the Russian system and the American system for the purpose, as in-

timated in the Government brief (p. 29), of asking whether we have any *right* to protest against the Russian adoption and extension of our methods; that question is not involved here. Our reason for pointing out the analogy, the sole reason for dwelling upon it at such length, is to prove to this Honorable Court that by condemning as bounty paying the efforts of the Russian government to protect its manufacturers, this Court will be, in effect, indicting the American protective tariff system, and that the words "bounty or grant," as used in Section 5, could not have been intended to have any such comprehensive scope.

We do not claim that this Court should be asked to consider the effect of an exact application of an act of Congress, but we do claim that when an act is capable of two constructions, one limited and in harmony with the traditional policy of this country, the other an audacious and hypocritical attempt to penalize as bounty paying on the part of other nations the very system established here, then may it please the Court, we do claim that the Court can and should consider the consequences of the two constructions in order to determine which was intended by Congress.

Respectfully submitted,

ERNEST A. BIGELOW,
Petitioner's Counsel.

WASHINGTON, October Term, 1902.

31073

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

ROBERT E. DOWNS, PETITIONER,
v.
THE UNITED STATES.
No. 666.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

STATEMENT ON BEHALF OF THE UNITED STATES.

This case involves the construction of section 5 of the tariff act of 1897, imposing countervailing duties on importations of merchandise from countries which directly or indirectly pay a bounty on the exportation thereof. The application of this law to imports of sugar from Russia is directly involved under the Russian sugar law, and other foreign laws and plans of the same general nature are indirectly, but in principle, brought under consideration.

I do not, of course, concede any part of the argument on the merits made in this application, but I do agree that the questions raised are of especial gravity. They are (1) the proper delimitation of function or jurisdiction between the Secretary of the Treasury and the customs tribunals in determining the fact of bounty or no bounty; (2) the nature and status of the Russian

arrangement both as a fact to be established before the court, and, being so established, as matter of law to be construed by the court respecting its operation and effect; and (3) the construction and application under the conditions shown of section 5 of the current tariff act.

The importance of the issue is conceded, also, because it embraces our diplomatic and trade relations with a friendly power, and touches our relations with other friendly powers maintaining commercial schemes of a similar nature.

For these reasons I submit, without argument, the correctness of the decision of the circuit court of appeals holding that, as matter of fact and law, the laws of Russia bestow a bounty or grant upon the exportation of sugar; not desiring to resist the application, but to commit it to the court's judgment and determination without further discussion or advocacy.

The decision of the Board of General Appraisers and the dissenting view will be found as G. A. 4912 in 4 Treasury Decisions, page 405; see also record, page 23; the decision of the circuit court, record, page 73, and the decision of the circuit court of appeals in 113 Fed. Rep., 144. The case of Hills Brothers, which relates to the Dutch bounty under the same section of the act of 1897, is reported in 107 Fed. Rep., page 107.

JOHN K. RICHARDS,
Solicitor-General.

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